

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - TE/GE, EO Review
Cincinnati, OH 45201

Date: MAY 01 2002

[REDACTED]
[REDACTED]
[REDACTED]

Employer Identification Number:

[REDACTED]

Person to Contact - I.D. Number:

[REDACTED] [REDACTED]

Contact Telephone Numbers:

[REDACTED]

Phone

[REDACTED]

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1936 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on the attachments to this letter.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice

Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven P. Miller

Director, Exempt Organizations

Enclosures:

Attachment (pages 3-7)
Form 6018
Publication 892

FACTS:

You were incorporated as a nonprofit corporation in [REDACTED] on [REDACTED]

Your Articles of Incorporation state your specific purposes as follows: "(1) Fundraising activities for purposes of political advocacy and technological development in an attempt to create a viable source of [REDACTED] as a new fuel as well as other technologies to promote the betterment of humanity and protect the global environment. (2) The organization will attempt to become a major producer of [REDACTED] whereby the sale of the fuel will be used to fund the organization. (3) Should the fuel prove to be viable both on technical, environmental, and economic grounds, it will be apportioned for sale or donation as follows: (a) 1/4 of all production will be set aside in perpetuity for the distribution to underdeveloped countries in a program to meet the energy needs of individuals. (b) An additional 1/4 of the production will be set aside in perpetuity to provide hydrogen as a fuel for medium to large scale industrial applications; (c) The remaining 50% will be offered to the wholesale energy market at prices that must be maintained at [REDACTED] % below all [REDACTED] competitors. The organization will also monitor end market distributors to make sure that the guarantee discount is passed onto consumers."

Your articles of incorporation further provide that, in the event of dissolution, net assets would be transferred to one or more domestic or foreign organizations engaged in activities substantially similar to your own.

Your application states that you will provide a web page to forge a movement that will push for the implementation of the best alternative to the existing economic system, showcase a technological approach to a sea-based, wind-powered, [REDACTED] energy system, showcase a specific technological approach to a [REDACTED] system to prove a large scale [REDACTED] to space launch, and showcase a specific technological approach to a [REDACTED] transportation system. Initially, your activities will consist primarily of promoting your socio-economic theories through essays, music, and other information posted on your Web page; eventually, however, you plan to become involved in the production, placement, and sale of [REDACTED] energy generators, and development of a "World Public Energy Utility." You also will promote a "World Public Space Launch Utility," which would eventually involve producing a space launch service provider to be used on a fee-for-usage basis by governments and other entities. You also plan to propose and promote a "World Public Air Logistics Utility", including a [REDACTED] transportation system, providing reduced cost transport service on a global basis. Your principal sources of support in order of size will be, per your application, donations, sale of [REDACTED], sale of space launch services, and sale of air logistic services. You state that substantially all net income from

[REDACTED]

these activities will be used by you for further research and development of these and other technological efforts "to promote the betterment of humanity and protect the global environment."

Your by-laws (Part 1, Management Structure) provide that you will be governed by a seven-vote board of directors. This will consist first of a Chairman of the Board. The Chairman will have one vote and will have veto power over Board decisions, and the Chairman must be present in order to constitute a quorum of the Board. The Chairman's veto power can only be overridden by unanimous vote of all six other voters. The next two votes on the Board will come from public input. Individuals who donate will be given an opportunity to vote on critical Board decisions. Every dollar donated by an individual in the calendar year represents 1/1000 of a full vote. No individual shall have more than one vote. Donations over \$[REDACTED] will be allowed but the one vote limit shall remain. Political, corporate philanthropic or other such organizations can also donate funds, but they are not allowed to vote. With each new calendar year, all accumulations of voting privilege are rescinded, reestablished only by new donations. The remaining [REDACTED] members of the Board will be selected by the other members, and will have one vote each. At the time of your application, your Board consisted of the Chairman (your founder) and one other member selected by the Chairman. In [REDACTED] another member proposed by the Chairman was added. You have not yet received donations entitling donors to voting rights.

You will be a membership organization. Membership requirements are to log on to complete a sign up sheet on the web page and sending in a minimum \$[REDACTED] fee. You also state that you will eventually sell [REDACTED] fuel, space launch and air logistic services, but this will only be after development effort to ascertain technical feasibility.

When asked about possible political and/or lobbying activities, your letter dated [REDACTED] states that you will not be attempting to influence legislation, nor will you intervene in political campaigns. You hope to form "a new political consensus," through Internet "Web Page content, Essays and Original Music to educate the public for the need for change, and that a move towards an alternative form of economy, one that emphasizes community, freedom of information, sustainable growth, and personal freedom balanced with the greater good, is the only course of action people of good conscience ought to be considering." You state that if your proposals gain widespread acceptance, you will urge people to demand of their representatives to start taking the preparatory steps to begin change, but only in general terms. You will call for general public action, but will single out no individual politician.

In a letter dated [REDACTED] you stated that you could not separate your planned production and sales activities from your public education efforts, stating that "The political change envisioned cannot occur without at least two of the technologies advocated."

LAW:

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for any one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b) of the Regulations provides that an organization is organized exclusively for the required purposes only when its charter or other creating document authorizes it to carry on only activities that are in furtherance of these purposes. An organization is not organized exclusively for exempt purposes if its articles expressly authorize it to carry on, other than as an insubstantial part of its activities, activities which are not in furtherance of exempt purposes. Also, an organization is not organized exclusively for the required purposes unless its assets are dedicated to an exempt purpose.

Section 1.501(c)(3)-1(c) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not so be regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization which serves private interests rather than public purposes does not qualify for exempt status.

Code section 502 provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Code section 513(c) states, in part, for purposes of this section, the term "trade or business" includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

Regulations 1.501(c)(3)-1(d)(2) provides that a trade or business is "substantially related" to exempt purposes when the business activity has a substantial causal relationship to the achievement of the exempt purposes. Moreover, the conduct of the trade or business from which income is derived must contribute importantly to the accomplishment of the organization's exempt purpose.

Regulations 1.513-1(b) provides that the term "trade or business" has the same meaning it has in section 162 and generally includes any activity carried on for the production of income from the sale of goods or the performance of services.

In Better Business Bureau of Washington D.C. Inc. v. U. S., 326 U.S. 279 (1945), the taxpayer educated the public and local businesses about business fraud and the benefits of honest business practices. The court found that such educational programs were charitable and beneficial to the public, however, it also found that a substantial purpose was to promote a profitable business community. The Court held that the presence of a single non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Code section 501(c)(3), regardless of the number or importance of truly exempt [educational] purposes.

Revenue Ruling 72-369, 1972-2 C.B. 245, dealt with an organization that was formed to furnish managerial and consulting services to nonprofit organizations to improve the administration of their charitable programs. The organizations provided contractual services at cost. This ruling held that the provision of managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services were provided at cost and limited to non-profit organizations was not sufficient to characterize the activity as charitable under section 501(c)(3).

In Revenue Ruling 73-127, 1973-1 C.B. 221, it was held that an organization operating a "cut-rate" grocery store serving residents of a poverty area, in which some employees were disadvantaged persons undergoing job training, did not qualify for exemption: While the job-training phase of the operation was held to be charitable, it was concluded that the primary purpose of the organization was the operation of a trade or business, notwithstanding the absence of profit.

Revenue Ruling 76-37, 1976-1 C.B. 148, provides that an organization, which builds homes constructed by individuals learning the building trades as an on-the-job training program, sells the completed homes to the general public at fair market value, and uses this income in furtherance of its exempt purposes is not in receipt of unrelated business income and can be recognized as exempt under Code section 501(c)(3). In this case, the organization anticipated building two homes per year.

DISCUSSION AND CONCLUSION:

Your organization is not "organized" for exempt purposes, since your Articles of Incorporation expressly empower you to engage in a trade or business. Also, the dissolution provision in your Articles does not dedicate your assets to an exempt purpose. Your Articles also empower you to engage in "political advocacy." Although you have stated that you do not intend to engage in activities intended to influence political campaigns, you are empowered to do so.

The provisions in your bylaws giving veto power to your chairman give this individual the power to control your policies, activities, and uses of funds. This type of control is inconsistent with the prohibition against inurement and private benefit in the Regulations.

Nor are your planned operations exclusively charitable or educational within the meaning of section 501(c)(3). Your organization's planned activity of selling [REDACTED] on a regular basis is a trade or business as defined in Internal Revenue Code section 513 and Internal Revenue Code section 162, and as such precludes exemption under Code section 501(c)(3). While your provision of information to the public concerning alternative energy technologies may be educational, the scope of your planned business activities goes beyond educational efforts. While tax-exempt organizations are not prohibited from engaging in business activities, or from receiving payment for their products and services, such business activities must be incidental to the accomplishment of exempt purposes. Your operation of a "World Public energy Utility" selling energy and energy-generating equipment at rates that will undercut prices of other energy producers is a commercial enterprise.

Similarly, your planned operation of a "fully subsidized World Public space Launch Utility" to provide space launching facilities at a reduced cost is a trade or business, as is your proposed "World Public Air Logistics Utility."

Your activities are distinguished from those of the organization described in Revenue Ruling 76-37, whose primary purpose and activity was providing education in the building trades, and whose sales activities were on a very limited scale, intended only to dispose of the products of their training program.

Your organization is not exempt merely because its operations may not be conducted for the purpose of producing profit, or because any profits produced would be used for additional research and development, as indicated in Revenue Ruling 72-369 and 73-127. Your planned methods of distribution of your products and services are commercial in nature, and these activities are a substantial and integral part of your overall proposed operations. Accordingly, we hold that you are not entitled to exemption under section 501(c)(3) Code because you are not organized or operated exclusively for exempt purposes.